

ORIGINAL

K R A S K I N, L E S S E & C O S S O N, L L P
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

EX PARTE OR LATE FILED

2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Telephone (202) 296-8890
Telecopier (202) 296-8893

February 25, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED
FEB 25 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Western Wireless Corporation Petition for Designation as An Eligible
Telecommunications Carrier on the Crow Reservation, CC Docket 96-45, DA 99-
1847 and Deployment in Unserved and Underserved Areas, Including Tribal and
Insular Areas, FCC 99-204**

Ex Parte Presentation

Dear Ms. Salas:

On February 24, 2000, Richard Thronson, Vernon Whiteman, Larry Wetzit, Michael Strand and David Cosson, representing Project Telephone Company, Inc. participated in separate meetings with the respective Commission personnel to discuss the above referenced application:

Jordan Goldstein, Office of Commissioner Ness
Rebecca Beynon, Office of Commissioner Furchtgott-Roth
Kyle Dixon, Office of Commissioner Powell
Irene Flannery, Katherine Schroder, Lisa Boehley, Richard Smith, Mark Nadel, Ellen
Blackler, Common Carrier Bureau
Dorothy Attwood, Office of Chairman Kennard
Sarah Whitesell, Adam Krinsky, Office of Commissioner Tristani

The Project Telephone Company representatives discussed their filed comments in the referenced proceedings. The discussion emphasized the availability of Project's modern telephone service at reasonable rates to virtually the entire Reservation and Project's efforts to improve subscribership and economic opportunity. The attached handouts were distributed.

Sincerely yours,

David Cosson
David Cosson *JMK*

Attachments

No. of Copies rec'd 0+2
List ABCDE

PROJECT TELEPHONE COMPANY

POSITION ON JURISDICTION OF FCC UNDER SEC. 214(e)(6)

- Congress did not intend by S.1354 [Sec. 214(e)(6)] “to restrict or expand the existing jurisdiction of State commissions over any common carrier.”
- Despite its arguments, Western Wireless has not demonstrated that it is not subject to jurisdiction of the state commission.
- Western Wireless’s jurisdictional theory in this case is inconsistent with its application for and/or acceptance of ETC designation from other state commissions.
- Western Wireless’s withdrawal of its state-wide application in Montana was not based on jurisdictional grounds, but a claim that discovery was overbroad and the PSC’s criteria unfocused. In any event, its remaining 12 state designations and applications are inconsistent with its jurisdictional theory..
- The Commission’s prior designations under Sec. 214(e)(6) involved tribally owned carriers where the state commissions’ lack of jurisdiction was clear and uncontested.
- The Montana PSC expressly asserts jurisdiction, and its legislative authority is unambiguous.
- Sec 332 does not deprive state commissions of jurisdiction to act on ETC applications, and the Commission has so held. (12 FCC Rcd 8776, 8859 (1997))
- A finding that states have no jurisdiction over carriers serving on reservations would create a significant regulatory vacuum, exclude reservations from state USF programs and invalidate all existing ETC designations as to access lines on reservations.
- Dicta in *Montana v. United States* is not a sufficient basis for the Commission to declare states without jurisdiction, especially without a “particularized inquiry.”
- A conclusion that state commission have no jurisdiction on reservations would have to include consideration of the “checkerboard” problem of non-Indian fee holdings.
- Even if the Commission had Section 214(e)(6) jurisdiction on the Reservation, that jurisdiction would not extend to Project’s off-Reservation portion of its study area, and any change in its study area requires a Joint Board proceeding.
- A finding that Western Wireless has not established lack of state jurisdiction would not prejudice the Rulemaking, but a finding of lack of jurisdiction would.
- There is no basis for Commission jurisdiction under Section 214(e)(3).

PROJECT TELEPHONE COMPANY

POSITIONS ON WESTERN WIRELESS ETC REQUEST FOR CROW RESERVATION DA 99-1847

- **Western Wireless has not established FCC jurisdiction to act under Section 214(e)(6) and the Montana PSC asserts jurisdiction.**
- **Project has deployed modern telephone facilities to virtually all households on the reservation, which required substantial investment, and is ambitiously deploying advanced services. Approximately 70% of households subscribe to service, not 45% as stated by Western Wireless**
- **Project has made substantial efforts to increase subscribership, expand the local calling scope, improve economic conditions on the Reservation and involve tribal members in its operations. Project has made significant advanced facilities available to schools and health care facilities.**
- **Below average subscribership is a result of extreme poverty and unemployment, not lack of facilities or excessive rates.**
- **Western Wireless has not shown that it offers the services specified by Sec. 54.101(a).**
- **Grant of ETC status would not serve the public interest because the result would be a degradation of service to the Reservation.**
- **In very rural situations, the benefits of competition cannot be presumed to outweigh the costs of duplicate facilities.**
- **Western Wireless has not justified its requested waivers, but if granted, the waivers should be made available to all competing ETCs.**

CC DOCKET 96-45--TRIBAL SERVICE

- **Continuation of the high quality service at reasonable rates requires proper resolution of the rural telephone company phase of the universal service proceeding**
- **The Commission should act promptly to resolve outstanding lifeline issues regarding Montana**

PROJECT TELEPHONE COMPANY

PUBLIC INTEREST FACTORS REGARDING A SECOND ETC ON THE CROW RESERVATION

- **Section 214(e)(2) requires a specific public interest finding before designating a second ETC in the service area of a rural telephone company. This statutory provision necessarily means that the encouragement of competition from a second ETC is not a sufficient basis for the public interest finding.**
- **Proposed service will be of substantially inferior quality compared to that of Project**
 - **There are substantial gaps in signal coverage, contrary to statement that service is presently available; WW provides no evidence that it is capable of improving.**
 - **The service is not capable of reasonable data speed, nor of evolving to broadband**
 - **The service cannot be used in health care facilities**
 - **Service dependent on local power supply/batteries is inherently less reliable**
 - **WW's significant miscalculation of the market indicates its business plan is unsound**
- **Existing low level of subscribership will not be improved by designating a second ETC**
 - **The cause of non-subscribership is the Reservation's economy, not a lack of availability of service at reasonable rates.**
 - **Because subscribership on the Reservation is much higher than stated by Western Wireless, there is much less growth opportunity for a second carrier, which will not come at the expense of Project.**
 - **Duplication of facilities where subscribers already support substantial amount of unused plant, will only create two carriers with insufficient revenues to cover their costs.**
 - **The amount of support for which a wireless second ETC is eligible cannot be determined under the current Commission rules, therefore the Commission cannot evaluate the public interest requirement.**